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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 769 (AJN)

5 YURI LEBEDEV and TREVON GROSS,

6 Defendants.

Jury Trial

7 -----x
8 New York, N.Y.
9 March 13, 2017
12:00 P.M.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge
13 And A Jury

14 APPEARANCES

15 JOON H. KIM
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16 Southern District of New York
BY: EUN YOUNG CHOI
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BY: HENRY E. KLINGEMAN
25

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(In open court; jury not present)

THE COURT: I have no note but I want to think through two scheduling issues so that we can take the time we need to propose a solution and then implement it without any unnecessary delay.

The first is that a juror approached Ms. Nuñez on the way in this morning and indicated that she had a doctor -- she thinks she has or there may be a doctor's appointment at 4:30 this afternoon which she said would require her leaving at 3:30. She did ask Ms. Nuñez, she said she needed to confirm the appointment so she gave Ms. Nuñez a number to call to confirm. Ms. Nuñez was not able to confirm it without additional information.

So I think what we need to do is basically allow this juror to -- I think we need to do some pause of deliberations so this juror can make the call and figure out if she does, in fact, need to leave early or not and then deal from there.

The second is, of course, the snow. And my inclination is to presume that the predictions are correct and that we should not have folks attempt to come in tomorrow out of concern that even if the courthouse is open there will be some jurors affected by other closings, some who will have difficulty getting in, and I worry about trying to have some folks get here only to learn not everybody could. So I think certainty is probably the best resolution that we can give.

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1 And so my inclination is to deal with the two scheduling issues
2 at once.

3 The jury's lunch is going in around 12:30. My
4 proposal, and I am happy to hear suggestions, would be to bring
5 the jurors into the courtroom in 15, 20 minutes or so, inform
6 them of the likelihood that or the conclusion that they won't
7 sit tomorrow because of the impending snowstorm so if their
8 deliberations are not completed by the end of the day, that
9 we'll resume on Wednesday barring further information.

10 We could put that off until the end of the day if
11 folks prefer. I'm happy to address whatever timing concerns
12 you might have of that. But otherwise indicate that a juror
13 has said that they may have an appointment, ask that juror to
14 go with Ms. Nuñez into the robing room to make the call and ask
15 the other jurors to wait until she returns, let that juror get
16 as much information as she needs and then I think my
17 instruction would be based on that information once again the
18 jurors should just send a note as to the timing that they
19 request to leave for the day.

20 MS. CHOI: I don't know if your Honor was
21 contemplating a situation in which even if that particular
22 juror has a 3:30 appointment if the appointment is not going to
23 be particularly long for them to come back and continue
24 deliberations. I only say that given that we don't have any
25 notion as to how far they may be. I think there may be an

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1 inclination that they would want to stay later than 5 p.m. if
2 given the opportunity. And they may not -- since I think your
3 Honor has never said that expressly to them given that on
4 Friday there was that other conflict issue although obviously
5 the court and the parties have considered that as a possibility
6 it may sort of be a situation in which you may want to give
7 them the option of placing them on hold, everyone sort of
8 leaving the deliberation room until she returns and then their
9 continuing to --

10 THE COURT: So one piece -- the appointment is in the
11 Bronx.

12 MS. CHOI: Okay.

13 THE COURT: She thinks it's for 4:30 which is what
14 caused her to say she would need to leave at 3:30, given that
15 travel time.

16 MS. CHOI: I didn't -- if it's the Bronx I think that
17 changes things. If it was somewhere nearby obviously it may
18 have made sense.

19 THE COURT: So, let's take them one at a time. With
20 respect to the appointment issue, my suggestion is we bring
21 them in to the jury box a little bit before their lunch is
22 brought in, indicate that a juror might have an appointment
23 issue; say that Ms. Nuñez will take her to a phone so she can
24 call and figure out what she needs to figure out, tell the
25 other jurors to pause their deliberations until she returns,

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1 and then with the information that she has upon return the
2 juror should indicate when they want to stop deliberating for
3 the day.

4 MS. CHOI: Yes. When they want to stop deliberating
5 for the day. I think if we're doing it all at once if the
6 Court would let -- at least give them the option of saying
7 beyond five assuming that that particular conflict can be
8 resolved or is resolved one way or the other because I think
9 under normal circumstances they may want to elect to have that
10 option.

11 THE COURT: I think I did suggest that possibility
12 last week but I'll say again based on that information and
13 everyone's schedule they can simply let us know if they need to
14 leave early to accommodate this appointment, if they need to
15 leave at five, or if they desire to continue deliberating they
16 may do so and to let us know.

17 So taking that issue first, sounds like the government
18 is in agreement.

19 Mr. Creizman?

20 MR. CREIZMAN: I'm in agreement with the Court's
21 suggestion.

22 THE COURT: Mr. Klingeman.

23 MR. KLINGEMAN: I agree.

24 THE COURT: And everybody is comfortable with the
25 phrasing? All right. And then snow.

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1 I think the two decisions are should we just go ahead
2 and presume no court tomorrow; and if so, when should we tell
3 them?

4 MS. CHOI: Your Honor, I think we should wait until
5 the end of the day on that question for a few reasons. I think
6 everyone would agree that you wouldn't want to put undue
7 pressure on the jury to try to rush things because they don't
8 want to come back on Wednesday as opposed to Tuesday.

9 In addition, as a general matter, sometimes they get
10 it wrong and it's my understanding that at least as of now
11 Judge McMahon hasn't closed the courthouse officially.

12 THE COURT: It's true. I don't think we'll know by
13 the end of the day today whether the courthouse will be closed.

14 MS. CHOI: I see. Okay.

15 I still think there is no reason to rush things. It
16 only becomes an issue if the jury still would like to
17 deliberate beyond the hours allocated to them today be it
18 because of the conflict from the medical issue or otherwise.
19 So I don't think that there's any reason to inform them of the
20 possibility that the courthouse may be closed if it doesn't end
21 up -- if they don't need to necessarily -- we don't have to
22 reach that path yet, if that makes sense.

23 THE COURT: Well I'm not sure it's directly responsive
24 to the suggestion.

25 The first question is when do I make a decision as to

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1 whether they will deliberate tomorrow or not if they're still
2 going; the second question is when to inform them of that.

3 MS. CHOI: I think if the end time is 3:30 and they're
4 going to stick by the 3:30, then I think there is no reason not
5 to tell them that there is a possibility that the court may be
6 closed if for no other reason we need to deal with the
7 logistical situation of -- and I don't know how your Honor
8 wants to take this but I presume that there would be some way
9 in order for the court to inform the jurors of this fact or you
10 know some sort of --

11 THE COURT: I'm not making myself clear.

12 My concern would simply tying sitting tomorrow with
13 whether or not the courthouse is open. Strikes me as
14 problematic for a couple of reasons. Now you can tell me I'm
15 wrong, but it's problematic because the courthouse will
16 probably be open even if schools are not open, even if people
17 would face transportation issues.

18 What I don't want to do is have ten jurors trudge in
19 here through the snow and dealing with all kinds of issues only
20 to learn by ten o'clock tomorrow that two can't make it.

21 So my suggestion would be to just decide based on what
22 we know of the weather predictions now that I won't ask them to
23 deliberate tomorrow.

24 MS. CHOI: If your Honor is inclined to have them not
25 deliberate in anticipation of tomorrow irregardless --

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1 regardless of what happens with regard to official court
2 closure, the government's position is that your Honor should
3 still I think wait until the end of the day to inform them of
4 that fact.

5 THE COURT: Understood.

6 Mr. Creizman.

7 MR. CREIZMAN: Your Honor, I would request that the
8 jurors be brought out before lunch and the reason is, is
9 because several of the jurors, I believe, are from Westchester
10 County and one of them I believe is from Putnam County, and
11 there is no way that this storm is not on their minds. I think
12 the way to relieve the pressure on the jury is actually to let
13 them know that, hey, there is a juror that may have to leave
14 for a doctor's appointment at 3:30 because one of the issues is
15 getting home tonight and making sure that -- worrying about
16 whether they are going to be stuck in the city or something
17 like that; and number two, thinking that, hey, are we going to
18 have to come back tomorrow or not. That's another -- so in
19 order to relieve the pressure from the jury, letting them know
20 rather than keeping them in the dark until the end of the day,
21 whatever, which they don't know what the end of the day is at
22 this point, I think bringing them in in 30 minutes, 20 minutes,
23 whatever it is before their lunch would make sense.

24 THE COURT: I'm going to bring them in any way to deal
25 with the one juror. And your suggestion is simply to tell

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1 them, if we come to -- if everyone agrees with the conclusion
2 that we should just prophylactically cancel for tomorrow, your
3 preference is to let them know that sooner rather than later.

4 MR. CREIZMAN: Absolutely.

5 THE COURT: Mr. Klingeman.

6 MR. KLINGEMAN: I would agree with what's been said.
7 This is the way I would see it working out. If the juror with
8 the doctor appointment has to keep that appointment and thus
9 deliberations have to end at 3:30, then I would agree with
10 informing the jury now that they're not going to be coming back
11 tomorrow so that they can begin to relax about the storm and
12 focus on the next several hours of their deliberations knowing
13 they will be resuming them, in all likelihood or at least in
14 all probability, Wednesday.

15 If the juror turns out doesn't need to go to the
16 doctor appointment, then I would suggest telling the jury that
17 they are going to be -- they're not going to be sitting
18 tomorrow, not going to be deliberating tomorrow, but advising
19 them what your Honor has already told them, reminding them what
20 your Honor has already told them which is they can stay late
21 today if they want.

22 THE COURT: So in both instances -- whatever is the
23 necessity around the one juror's appointment, you agree with
24 Mr. Creizman that we should tell them, I should tell them at
25 the lunch break that we won't sit tomorrow because of the

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1 impending snowstorm and so if they're not completed with their
2 deliberations by the end of the day today they'll return
3 Wednesday morning.

4 MR. KLINGEMAN: I do agree. What I don't want is this
5 external concern weighing on their minds over the next few
6 hours.

7 THE COURT: Ms. Choi.

8 MS. CHOI: That's fine. I thought -- as long as
9 defense counsel has come to agreement with it, the government
10 is fine with whatever approach is taken with regard to that. I
11 mean it just seems as though -- I can see it going both ways.
12 But defense counsel seems to be unanimous in the way in which
13 they'd like to approach the issue and the government has no
14 objection to that.

15 THE COURT: No. It's impossible to predict what exact
16 impact it has either not knowing or knowing so we can err on
17 the side of truth.

18 MS. CHOI: Fair enough. I think either way they are
19 thinking about it. You might as well just relieve them of
20 their -- at least their lack of knowing what the future lies.

21 MR. KLINGEMAN: From my perspective the implication of
22 telling them about tomorrow is that they can take as much or as
23 little time as they need to continue their deliberations. It's
24 a neutral impact disclosure.

25 THE COURT: All right.

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1 I recognize I came in with this assumption but let me
2 just make sure everybody agrees with my judgment and tell me if
3 you think we should approach it differently, but the judgment
4 to sort of trust that the weather predictions are close to
5 right and just go ahead and presume and cancel for tomorrow.

6 MR. CREIZMAN: Yes, your Honor. I agree with that.

7 MR. KLINGEMAN: I haven't looked at the forecast but
8 it looked pretty grim at about nine o'clock this morning.

9 THE COURT: It looks grim. Who knows, but it looks
10 grim, though it doesn't look like it will start until late
11 tonight so I don't think returning home will be an issue. It
12 could -- it also looks like it will be an all-day storm
13 potentially which means that Wednesday could itself -- could
14 itself pose an issue but at least with respect to that I feel
15 like we can see where we are and come to a decision at an
16 appropriate point and inform them as necessary.

17 MS. CHOI: Right. I think that's right, your Honor.
18 I think with regard to Wednesday, you know, before they break
19 for the day, whatever time that might be, that your Honor
20 inform them of some sort of way in which they could contact the
21 court about Wednesday.

22 THE COURT: We have -- Ms. Nuñez can contact all of
23 them and I think rather than sending them into the court system
24 for, again, whether the courthouse is closed, I think --

25 MS. CHOI: Right. To make clear that it's what your

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1 Honor says as opposed to if they go to the website or anything
2 else, I think that that -- I think that makes a lot of sense.

3 THE COURT: Okay.

4 So just to repeat the plan that we're in agreement.
5 So I want to time it around when their lunch is coming since
6 that's a breaking point anyway. So I'll step off, but in about
7 ten minutes I'll come back on, bring them out, indicate that
8 I've been informed of the issue with respect to the one juror
9 but Ms. Nuñez has not been able to resolve it. Ask her -- ask
10 the jury when they return to the jury deliberation room to
11 pause their deliberations until that juror returns. Ms. Nuñez
12 will take that juror to a telephone so she can find out
13 whatever she can, whatever information she needs about when she
14 needs to leave tonight; and then third, what I'll say to the
15 jurors is based on that information that she takes back to the
16 jurors, it will be up to them as to when --

17 MS. CHOI: The end for the day.

18 THE COURT: The end of the day is. If she needs to
19 leave earlier they -- if she needs to leave -- if they need to
20 stop because she needs to leave early, they should indicate
21 that. If they need to stop at 5 and aren't yet through with
22 their work they should indicate that. Should they agree to
23 continue deliberating later than five that, too, is fine. They
24 should just let the Court know by note.

25 And then number two, I'm telling them now because of

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1 the impending snowstorm predicted for tomorrow that the Court
2 will not ask them to come in for deliberations tomorrow so that
3 if their work is not complete by the end of the day today,
4 whatever time they determine that to be, they will not be
5 required to come in tomorrow and deliberations will resume
6 Wednesday morning at 9:30. Okay.

7 MR. CREIZMAN: Yes, your Honor.

8 THE COURT: I'll step down just for a few minutes to
9 get us closer to 12:30 and we'll come back.

10 (Recess)

11 THE COURT: The jury's lunch is on the way. So we'll
12 bring them in now, proceed as planned. As a quick note, they
13 just closed New York City schools for tomorrow.

14 (Jury present; time noted 12:36 p.m.)

15 THE COURT: Good afternoon everyone. Please take your
16 seats as you come in. Good afternoon everyone. Everyone may
17 be seated.

18 Your lunch has arrived. So that's going in. So we
19 thought -- I thought I'd take the opportunity to deal with two
20 scheduling matters.

21 The first. On the way in this morning one of you
22 indicated to Ms. Nuñez that there might be a potential doctor's
23 appointment scheduling issue. She was not able to confirm one
24 way or the other so what we'll do is I'll ask that juror to go
25 with Ms. Nuñez after you come out of the jury room here now and

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1 Ms. Nuñez will take you to a phone and you can make whatever
2 calls you need to make to find out that information.

3 You'll take that information into -- back with you to
4 the jury room. Other jurors I'll ask, of course, that you
5 pause your deliberations until all twelve of you are there.
6 With that information, the decision as to when we will end
7 today will be up to you, the jurors. If to accommodate that
8 appointment is a necessity you'll let me know by note that you
9 need to leave at whatever time that juror needs to leave.
10 We'll end deliberations for the day. If that doesn't need to
11 be accommodated and you need to leave at five, if your work is
12 not yet done, you'll let me know by note that that's the case.
13 If your work is not done and you'd like to proceed beyond five,
14 you'll let me know by note if that's the case. So that juror
15 will have whatever information she needs and then you as a
16 group will let me know what you want.

17 Second, of course there's a snowstorm coming. I've
18 just learned that New York City public schools are closed
19 tomorrow so I'm going -- I have made the decision if your work
20 is not yet complete you will not sit and deliberate tomorrow.

21 So, that means if the process is ongoing the plan will
22 be to -- and it's not completed by the end of the day today,
23 whatever time you let me know you want that to be, you would
24 plan on resuming Wednesday at 9:30 with me contacting you
25 through Ms. Nuñez if the weather is impacting anything for

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1 Wednesday.

2 So, that is the plan. I will ask, just as you go back
3 in, the one juror who needs to make the call with Ms. Nuñez, if
4 you would just pause in the hallway and, again, other jurors
5 help yourself to lunch but, please, of course wait until all
6 twelve of you are there for deliberations.

7 Thank you so much. Enjoy your lunch.

8 (Jury excused)

9 THE COURT: Anything to address? Counsel?

10 MS. CHOI: Not from the government, your Honor.

11 MR. KLINGEMAN: No, your Honor.

12 THE COURT: Mr. Creizman anything?

13 MR. CREIZMAN: No, your Honor.

14 THE COURT: All right. We'll wait until we hear
15 further. Thank you so much.

16 (Recess pending verdict)

17 (At 1:52 p.m. a note was received from the jury)

18 (Jury not present)

19 THE COURT: I did receive a note which reads:

20 "Your Honor, we would like to request the following
21 transcript, cross-examination of Trevon Gross on March 7, 2017.

22 "We would also like to request clarification on the
23 definition of reasonably foreseeable as it relates to venue.

24 "Kind regards. "

25 Signed Juror no. 2.

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1 "P.S. We request to be dismissed at 3:15 p.m. so
2 juror no. 9 may attend her doctor's appointment."

3 We'll mark this as Court Exhibit 4.

4 Here is what I propose. Hopefully our advanced work
5 of preparing the transcript helped us out. If the government
6 can show -- I'll step down. If the government can show to the
7 defense what you propose go back for that and get agreement in
8 printed version so that it can go back quickly, and I also
9 suggest that you start thinking about what you would propose
10 to -- if anything, to expand, illuminate reasonable
11 foreseeability with respect to venue. I'll do the same. I'll
12 return.

13 MR. KLINGEMAN: I just had a question as to the exact
14 phraseology. Was it reasonably foreseeable or reasonable
15 foreseeability?

16 THE COURT: The definition of "reasonably foreseeable"
17 as it relates to venue.

18 I'll look at the latter as well as I step off and
19 rejoin you in a few minutes. Thank you.

20 (Recess)

21 THE COURT: We have the transcript ready?

22 MR. KLINGEMAN: Your Honor, I just have one request.
23 I'd ask what the entire testimony from start to finish be given
24 to the jury since that's the way it was presented to the jury.

25 MS. CHOI: Obviously we disagree, your Honor. The

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1 note was specific about what the jurors wanted which is the
2 cross of the defendant and the government would ask that only
3 the cross be sent back.

4 THE COURT: I will give them what they've asked for.
5 They were made aware that they could ask for what they like and
6 it could be that the next note asks for more but right now
7 we'll respond to this note.

8 Do you have agreement on what constitutes the cross?

9 MS. CHOI: Your Honor, we've given defense counsel the
10 transcript electronically. They're reviewing it. We're
11 waiting for confirmation as to the page numbers and agreement
12 on the page numbers.

13 MR. CREIZMAN: I think we --

14 THE COURT: Can't hear you.

15 MR. CREIZMAN: From Mr. Lebedev's side we've reached
16 agreement on the page numbers and what constitutes the cross
17 which includes Lebedev's cross.

18 THE COURT: So any redaction issues are resolved as
19 far as you're concerned?

20 MR. CREIZMAN: We've reviewed the redaction issues
21 from our perspective.

22 THE COURT: Mr. Klingeman.

23 MR. KLINGEMAN: No objection.

24 THE COURT: You're in agreement as to the material.

25 So what I propose is while we discuss how to handle

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1 the second request that we send that back in the meantime.

2 MS. CHOI: Mr. Chang-Frieden is enacting the
3 redactions now and can e-mail it to Ms. Nuñez for purposes of
4 printing it. We don't have a hard copy yet but hopefully that
5 will be done forthwith.

6 With regard to the venue issue I would defer to
7 Mr. Shin since he's the person who has written about this
8 particular issue in particular.

9 THE COURT: Go ahead, Mr. Shin.

10 MR. SHIN: Judge, you may recall that prior to the
11 charge conference we had submitted a letter regarding a series
12 of edits and supplements to the venue instruction. And we had
13 reached agreement that we would actually eliminate those issues
14 and just give a very bare-bones venue charge. But in light of
15 the additional questions raised -- an additional question
16 raised by the jury in a note today, the government's position
17 is that it would be appropriate to provide the additional
18 detail that had been set forth in the letter.

19 So just to remind the Court, the initial instruction
20 as proposed by the parties had included some detail about --
21 there was an example of e-mail communications.

22 THE COURT: Right.

23 MR. SHIN: And there were scenarios, depending on
24 whether the defendant or the coconspirator was in the district
25 and receiving an e-mail or sending an e-mail versus outside of

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1 the district and sending or receiving something to someone else
2 who is in the district. And so that scenario was laid out.
3 And we had also proposed a supplement regarding venue being
4 established by financial transactions including wire transfers
5 from, through, or to the district. Including some additional
6 instruction consistent with Second Circuit cases we had cited
7 which provide that it's appropriate to consider the defendant's
8 business savvy as well as particular documents the defendant
9 may have seen reflecting a wire transfer touching on the
10 district. And so in light of the jury's note in this case we
11 would propose that those additional instructions be given to
12 the jury consistent with what was set forth in our March 2
13 letter.

14 THE COURT: Okay. I'm looking at the March 2 letter.

15 The government's current proposal is to provide what's
16 included here with the track changes language incorporated.

17 MR. SHIN: Yes, your Honor. Just to remind the Court
18 the track changes we're addressing a couple of different
19 issues. One was just to make sure we were consistently using
20 reasonable foreseeability in the different e-mail scenarios so
21 that there would be no confusion about reasonable
22 foreseeability applies to whatever e-mail scenario the jury
23 might consider. Another set of edits was just to make clear
24 that reliance on e-mail or communication could be based on just
25 a single such e-mail or communication consistent with -- by

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1 analogy to the Parrilla example based on one call.

2 Finally, the third proposed change was the new
3 paragraph we had proposed regarding wire transfers and what
4 could be considered in determining whether a wire transfer is
5 reasonably foreseeable.

6 Of course, earlier in the letter we've cited the
7 various case law which supports the various propositions which
8 we've proposed.

9 THE COURT: Let me just read into the record what the
10 government's -- why don't you Mr. Shin read into the record
11 what the government's proposed charge would be and then I'll
12 hear from defense counsel.

13 MR. SHIN: Sure. So, just to set the context, your
14 Honor, the current charge includes a paragraph -- it's the
15 third paragraph of the current venue charge -- addressing
16 conspiracy. It's the current charge, in the third paragraph
17 says as to the conspiracy charges: The government need not
18 prove that any crime was completed in this district or that the
19 defendants or any of their coconspirators were physically
20 present here. Rather, venue is proper in this district if any
21 of the defendants or their coconspirators caused any act or
22 event to occur in this district in furtherance of the offense
23 and it was reasonably foreseeable to the defendant that you are
24 specifically considering that the act would take place in the
25 Southern District of New York.

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1 So that's where the current paragraph ends, your
2 Honor. The government would propose, first, that the following
3 language that I'll read be added. So, first, among other
4 things, venue can be established if any of the defendants or
5 their coconspirators caused any communication or wire to be
6 transmitted to, from, or through this district if the specific
7 communication in question was in furtherance of the conduct
8 constituting the offense. Such a communication can include the
9 transmission of an e-mail to or from this district in
10 furtherance of any of the offenses when any of the defendants
11 or coconspirators was in the district at the time he or she
12 sent or received the e-mail if that was known or reasonably
13 foreseeable to the defendant you are specifically considering;
14 or when any of the defendants or coconspirators was sending the
15 e-mail to someone in the district if that was known or
16 reasonably foreseeable to the defendant you are specifically
17 considering.

18 And then we had also proposed an additional paragraph
19 regarding financial transactions and the language we are
20 proposing would read as follow. Venue can also be established
21 if any of the defendants or their coconspirators caused any
22 financial transaction to be transmitted to, from, or through
23 this district if the specific transaction in question was in
24 furtherance of the conduct constituting the offense. Such a
25 financial transaction can include the transmission of a wire

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1 transfer to, from, or through this district in furtherance of
2 any of the offenses if the defendant you are specifically
3 considering knew or could reasonably foresee that the wire
4 transfer would be transmitted, to, from, or through this
5 district. In determining whether the defendant you are
6 specifically considering knew or could reasonably foresee that
7 the financial transaction would be transmitted to, from or
8 through this district, you may consider that defendant's
9 business savvy and whether he saw any documentation indicating
10 that the transaction would be transmitted to, from, or through
11 this district.

12 THE COURT: Go ahead, Mr. Klingeman.

13 MR. KLINGEMAN: Your Honor, we object to the
14 government's proposed language. I would note that the last
15 sentence in particular is drawn directly from the government's
16 argument in summation and the jury is welcome to consider it
17 but it should not be given the imprimatur of the court and
18 delivered as a jury instruction.

19 As I understood the note the jury was looking
20 specifically for a definition of reasonably foreseeable and I
21 would ask the Court to give a concise definition of reasonably
22 foreseeable.

23 THE COURT: What do you propose?

24 MR. KLINGEMAN: "An occurrence is reasonably
25 foreseeable if it -- excuse me -- if it is the consequence an

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1 ordinary person of average intelligence would expect to result
2 from his actions."

3 THE COURT: What is that drawn from?

4 MR. KLINGEMAN: I don't have specific authority for
5 it. It's a definition of reasonable foreseeability that we
6 draw from tort law and that I did to the best of my
7 recollection based on my limited ability to respond to the note
8 in the last few minutes.

9 THE COURT: I think the problem with that is the last
10 line of what the government read is the law and I think what
11 you just read would suggest that they could not take into
12 account, for example, things like business savvy and
13 sophistication located specifically in an ordinary person's
14 intelligence and the like.

15 I'm not signing on to the government's version either.
16 I think -- I do want to be directly responsive to the jury's
17 request. And I think you're right, Mr. Klingeman, I think what
18 they're looking for is some meat on the bones of reasonable
19 foreseeability and I think we need to do that in a way that's
20 fully consistent with the circuit law on what counts as
21 reasonable foreseeability in the context of venue.

22 MR. KLINGEMAN: Well perhaps instead of your Honor
23 using the term an ordinary person of average intelligence we
24 could substitute a person similarly situated to the defendant.

25 I assume that if there is direct knowledge of the

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1 defendant's -- excuse me -- direct evidence of the defendant's
2 knowledge, then the question of reasonable foreseeability is
3 moot.

4 THE COURT: I think that's right. The fact is -- so
5 actual knowledge takes care of reasonable foreseeability.

6 MR. KLINGEMAN: Yes.

7 THE COURT: But actual knowledge is not required,
8 something less than actual knowledge is required to be shown.
9 So I mean I was looking at the Rommy decision and there is a
10 passage there which is citing Rowe, 414 F.3d 271, and citing
11 Svoboda, 347 F.3d at 483, which talks in language of -- quoting
12 Rowe says, "must have known or contemplated that the
13 advertisement would be transmitted..."

14 I mean I wonder if there's a version -- something like
15 reasonable foreseeability means either actual knowledge or
16 the -- so either the defendant actually knew or was likely to
17 have known or something along those lines. Actual knowledge or
18 likely knew or contemplated that acts in furtherance of the
19 conspiracy would occur in the Southern District of New York.

20 So maybe the way to do it, putting that together is
21 something like venue can be established either by showing that
22 the defendant had actual knowledge of acts in furtherance of
23 the conspiracy occurring in the Southern District of New York
24 or that the defendant likely knew or contemplated that acts in
25 furtherance of the conspiracy would occur in the Southern

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1 District of New York.

2 Mr. Klingeman.

3 MR. KLINGEMAN: That sounds much closer to what --

4 THE COURT: What you're thinking?

5 MR. KLINGEMAN: What I was thinking, while taking into
6 account your Honor's description of the law.

7 THE COURT: Mr. Creizman.

8 MR. CREIZMAN: I do not take a position on this
9 particular issue.

10 THE COURT: Mr. Shin.

11 MR. SHIN: A couple of points, your Honor. While I
12 don't object to that structure, a couple points.

13 One is consistent with the charge as currently given
14 to the jury I think that language should refer to any act in
15 the singular rather than in the plural.

16 Second --

17 THE COURT: Just a second.

18 Go ahead.

19 MR. SHIN: I apologize, your Honor. Could I ask your
20 Honor to read one more time the likely new formulation?

21 THE COURT: Venue can be established either by showing
22 that the defendant had actual knowledge of an act in
23 furtherance of the conspiracy occurring in the Southern
24 District of New York or that the defendant likely knew or
25 contemplated that an act in furtherance of the conspiracy would

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1 occur in the Southern District of New York. That version that
2 I just read incorporated your request to make it singular, act.

3 MR. SHIN: Thank you, your Honor.

4 The one thing about the "likely knew," your Honor, is
5 I pulled up Rommy as your Honor was speaking. I think -- I'm
6 concerned that the likely knew -- I don't think I have seen
7 likeliness associated with reasonable foreseeability. And I'm
8 concerned that they then will impose a higher burden than is
9 actually warranted especially because what I have seen is
10 reference to could reasonably have foreseen. It's often
11 written in terms of could rather than --

12 THE COURT: I fully agree with that and I'm open to a
13 suggestion on that adverb, I think. But what I don't want to
14 do is simply -- if we can avoid it, simply repeat the phrase
15 "reasonable foreseeability."

16 Now, sometimes we can't avoid it and we send the jury
17 back with the language we have. But if there's a suggestion
18 for that standard, that could have known standard or should
19 have known standard, reasonably could have known, perhaps.

20 MR. SHIN: Your Honor, I think reasonably could have
21 known is -- comes closest I think to reasonably foreseeable of
22 the formulations that the Court as offered.

23 I would request, though, that if we are going to
24 provide this explanation that it include -- I've lost the
25 precise framing but somewhere in there if it could say someone

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1 with the defendant's experience or someone in the defendant's
2 position; adding something like that, someone with the
3 defendant's experience could have known and so on, just, again,
4 to clarify to the jury that it's the defendant's particular
5 circumstances rather than some generic ordinary person kind of
6 standard that controls in this case which I believe is fully
7 consistent with the Second Circuit case law.

8 THE COURT: So let me adopt then the suggestion would
9 be venue can be established either by showing that the
10 defendant had actual knowledge of an act in furtherance of the
11 conspiracy occurring in the Southern District of New York or
12 that the defendant reasonably could have known or contemplated
13 that an act in furtherance of the conspiracy would occur in the
14 Southern District of New York. It's not phrased in the
15 objective. It's phrased with respect to the defendant.

16 MR. SHIN: Right, your Honor. I think what would
17 reflect our request is that the defendant reasonably could have
18 known or contemplated in light of his experience and position
19 or something -- I'm not wedded to any particular phrasing of
20 that concept, of the "in light of."

21 THE COURT: Nor I. So let's start with a proposal.

22 MR. SHIN: Or that the defendant reasonably could have
23 known or contemplated in light of his experience and
24 background, or let's go with that as the proposal, "in light of
25 his experience and background." And then I think it would pick

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1 up where the language that currently exists, your Honor.

2 THE COURT: In light of his experience or background
3 that an act in furtherance of the conspiracy would occur in the
4 Southern District of New York. I think that's fair.

5 Go ahead, Mr. Klingeman. Do you want to hear it
6 through one more time?

7 MR. KLINGEMAN: If we could just get it one more time
8 and then if I could have a moment.

9 THE COURT: Yes. Absolutely.

10 Venue can be established either by showing that the
11 defendant had actual knowledge of an act in furtherance of the
12 conspiracy occurring in the Southern District of New York or
13 that the defendant reasonably could have known or contemplated,
14 in light of his experience and background, that an act in
15 furtherance of the conspiracy would occur in the Southern
16 District of New York.

17 MR. NOBLE: Judge.

18 THE COURT: One lawyer rule.

19 MR. NOBLE: Yes, Judge.

20 THE COURT: Go ahead, Mr. Klingeman.

21 MR. KLINGEMAN: Your Honor, we would agree with the
22 instruction as you've just described it based on its original
23 form without the government's additional formulation. Here's
24 my rationale. I'm not convinced that the case law imposes a
25 higher duty of knowledge or foreseeability on Mr. Gross with

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1 respect to this particular set of circumstances. In other
2 words, I read the cases in the securities area as imposing a
3 duty that's common throughout the industry on people who work
4 throughout the industry, if that makes any sense; whereas,
5 Mr. Gross is being attributed with certain financial knowledge
6 by the government with respect to the way wire transfers work
7 that I don't think is fair or e-mail which is actually not an
8 area of specific expertise. You just have to know where the
9 sender or receiver may be at a particular time.

10 So I like what your Honor originally suggested which
11 was "or that the defendant reasonably could have known or
12 contemplated that an act in furtherance of the conspiracy would
13 occur in the Southern District of New York," because that talks
14 about the defendant and Mr. Gross in particular and the
15 knowledge that he had that may have been developed, for
16 example, during the cross-examination that the jury could then
17 reflect upon in terms of the definition that your Honor is
18 providing the jury.

19 So we'd like the original definition without the
20 government's additional language of "in light of his experience
21 and background."

22 THE COURT: I think -- my immediate reaction to what
23 you said is I don't understand this proposed language as
24 imposing a higher burden. I do want to make clear to the jury
25 that it's not an objective standard; that they can take into

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1 account all pertinent facts, all facts they deem relevant,
2 including --

3 MR. KLINGEMAN: Then I think exactly what your Honor
4 just said may be something we could work with. Instead of
5 saying, "In light of his experience and background," say
6 something to the effect of, "In light of the facts as you
7 determine them to be."

8 THE COURT: How about --

9 MR. SHIN: If I could address a couple of points that
10 Mr. Klingeman raised.

11 THE COURT: Go ahead. First, I think just saying "in
12 light of the facts as you determine them to be" doesn't give
13 the jury any guidance as to what factors are relevant to
14 whether something is reasonably foreseeable; and to
15 Mr. Klingeman's earlier point that the cases that we've cited
16 only apply if it's something that's generally applicable to the
17 industry, that's not what the circuit said. The circuit in
18 those cases was specifically talking about the facts of the
19 particular defendant they were discussing. So they said in one
20 case the defendant was a sophisticated lawyer and tax
21 accountant. It was not setting some kind of general rule that
22 you only get this particular test if it's -- if you're a tax
23 accountant and lawyer. It was talking about the specific
24 circumstances of that defendant. That was the Ohle case.

25 And then Svoboda they specifically made reference to

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1 the fact that the defendant was a savvy investor. And so all
2 we're asking for, your Honor, is that the jury be instructed
3 consistently with those cases that they be permitted to
4 consider the defendant's background and experience. We're not
5 taking the more aggressive position which we think would be
6 justified in this case to say including whether the defendant
7 was a savvy business person or including whether the defendant
8 was a chairman and CEO of a federal credit union. And so we've
9 proposed language that keeps it in general terms but accurately
10 instructs the jury that they can consider the defendant's
11 particular circumstances.

12 MR. KLINGEMAN: The difficulty with that is it does
13 impose on the defendant, this particular defendant, a higher
14 capability, intellectual capability.

15 THE COURT: I don't see that.

16 MR. KLINGEMAN: Let me explain. The venue facts turn
17 on a number of different pieces of evidence in the case, not
18 just the wire issues.

19 THE COURT: Right.

20 MR. KLINGEMAN: But e-mail, for example. And in terms
21 of whether you know where an e-mail is going or where it's been
22 sent from doesn't require any specific --

23 THE COURT: I thought the e-mail evidence turned on
24 where Mr. Gross was when he sent the e-mail.

25 MS. CHOI: Or received it.

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1 MR. SHIN: It could turn on if he was present in the
2 district when he sent or received it. It could also turn on
3 even if he was outside the district it was reasonably
4 foreseeable to him that the person he was corresponding with
5 was in the district.

6 MR. KLINGEMAN: I would submit that doesn't turn on
7 his experience and background anymore than it does for anybody
8 who sends and receives e-mail. It's only when you get into the
9 wires that you get into the dispute that the parties have that
10 Mr. -- in the case of wire transfer records that are resident
11 at a bank branch, whether Mr. Gross either could have or should
12 have taken it upon himself to go visit that branch and look at
13 it, or in the case of the wires that came in related to other
14 transactions in the case, whether he would note on the
15 attachments to various e-mails that it was a New York bank
16 mentioned.

17 So, again, I go back to the original language that the
18 Court suggested and I would ask that be given.

19 Remember, your Honor, they're just looking for
20 reasonably foreseeable, not a full definition of venue.

21 THE COURT: Well, no. They're not looking -- right
22 they're not looking for a full definition of venue, but I want
23 to make sure I'm giving a definition of reasonable
24 foreseeability. Because it's a distinction between knowledge
25 and actual knowledge, I don't want to dissuade them from an

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1 understanding that venue can be established by actual
2 knowledge.

3 MR. KLINGEMAN: Wouldn't that be clear from the
4 original instruction, your Honor, I would submit.

5 MR. SHIN: But these specifically asked.

6 THE COURT: No. They've asked the question. So I'm
7 not going to infuse confusion into an answer.

8 How about a version that is accurate but sends it back
9 to the jury for the assessment. So something like maybe just
10 grammatically we can take the clause set off by commas out and
11 end the sentence and say something like: In assessing a
12 defendant's knowledge or reasonably foreseeable knowledge you
13 may consider -- you may take into account his experience and
14 background to the degree you determine it relevant to the
15 assessment. That's a bit circular but it sends it back to them
16 in some way.

17 MS. CHOI: Sorry, your Honor, could you just repeat
18 that.

19 THE COURT: It didn't come out as nicely as I wanted.
20 So, we'd end the sentence that we talked about but
21 take out what I had previously said about based on what -- go
22 back to what I had said.

23 So I'll just read it. It would be: Venue can be
24 established either by showing that the defendant had actual
25 knowledge of an act in furtherance of the conspiracy occurring

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1 in the Southern District of New York or that the defendant
2 reasonably could have known or contemplated that an act in
3 furtherance of the conspiracy would occur in the Southern
4 District of New York. In assessing what the defendant knew or
5 could have -- or could have known or contemplated you may
6 consider any -- you may consider any relevant -- you may
7 consider any experience or background of the defendant that you
8 deem relevant or that you determine relevant.

9 So I'll read it again. "Venue can be established
10 either by showing that the defendant had actual knowledge of an
11 act in furtherance of the conspiracy occurring in the Southern
12 District of New York or that the defendant could have known or
13 contemplated that an act in furtherance of the conspiracy would
14 occur in the Southern District of New York. In assessing what
15 the defendant knew or could have known or contemplated, you may
16 consider any experience or background of the defendant that you
17 determine relevant."

18 MR. KLINGEMAN: I thought you used the modifier
19 "reasonably" before "could have known" and I think you should.

20 THE COURT: Let me try reading it again. I think I
21 just omitted it.

22 "Venue can be established either by showing that the
23 defendant had actual knowledge of an act in furtherance of the
24 conspiracy occurring in the Southern District of New York or
25 that the defendant reasonably could have known or contemplated

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1 that an act in furtherance of the conspiracy would occur in the
2 Southern District of New York. In assessing what the defendant
3 knew or could have reasonably known or contemplated, you may
4 consider any experience or background of the defendant that you
5 determine relevant.

6 MR. SHIN: Your Honor, a couple of comments.

7 First, I wouldn't want the -- first of all, we have no
8 objection to splitting that out into a separate sentence, "you
9 may consider" clause in that sentence.

10 THE COURT: Yes.

11 MR. SHIN: I'm concerned that the jury may read that
12 as meaning you may only consider what follows, the experience
13 or background. So could we perhaps include you may consider
14 experience or background of the defendant that you determine
15 relevant or any other, something like --

16 THE COURT: How about, "You may consider all facts
17 including any experience or background of the defendant that
18 you determine relevant."

19 MR. SHIN: That works, your Honor.

20 Just the other comment that we had, your Honor, is
21 that unless the note was written specifically with respect to
22 the conspiracy charge.

23 THE COURT: It wasn't.

24 MR. SHIN: Then we may also need to have a version of
25 this that applies to the substantive counts.

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1 THE COURT: It just was, "We would like to request
2 clarification on the definition of reasonably foreseeable as it
3 relates to venue."

4 May I make a suggestion just because this is -- we're
5 getting to the end of what is now deemed the day that I would
6 normally come and read the note to them and then send the
7 materials back and give them the answer at the same time but I
8 propose we send the transcript back in the meantime.

9 MR. SHIN: Makes sense, your Honor.

10 THE COURT: Any objection?

11 MR. KLINGEMAN: No.

12 MR. CREIZMAN: No objection.

13 THE COURT: So I have a -- I'll ask my deputy to give
14 that to the court security officer to give to the jury; that
15 is, the agreed-upon transcript of the cross-examination of
16 Mr. Gross.

17 MR. SHIN: So currently everything is framed in terms
18 of in furtherance of the conspiracy, I believe, the language
19 we've been discussing.

20 THE COURT: Right.

21 MR. SHIN: And so I think it may make sense to also
22 provide --

23 THE COURT: What if we replace "conspiracy" with
24 "crime" and do it as a singular. So I'll read it.

25 Venue can be established either by showing that the

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1 defendant had actual knowledge of an act in furtherance of the
2 crime occurring in the Southern District of New York or that
3 the defendant reasonably could have known or contemplated that
4 an act in furtherance of the crime would occur in the Southern
5 District of New York. In assessing what the defendant knew or
6 reasonably could have known or contemplated, you may consider
7 all facts that the defendant knew that you may determine -- no.
8 Just a moment. You may consider all facts including any
9 experience or background of the defendant that you determine
10 relevant.

11 MR. SHIN: That sounds right to us, your Honor.

12 MR. KLINGEMAN: The only thing I'd suggest we need to
13 do, however, is make -- remind the jury of the distinction
14 between venue for the conspiracy versus venue for the
15 substantive count as it pertains to Mr. Gross because the venue
16 related to the conspiracy is, as your Honor just indicated, any
17 act in furtherance of the conspiracy; whereas, the venue as it
18 relates to the substantive count relates to essential conduct
19 in furtherance of the conspiracy.

20 THE COURT: So we can do the repetition of language
21 for the two, and replace crime rather than doing it as a
22 singular charge. I think crime captures that. The
23 instructions are clear that this is how you consider it with
24 respect to the conspiracy count, this is how you consider it
25 with respect to the substantive count. But I'm willing to be

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1 redundant in the interest of time. So I'll ask --

2 MR. SHIN: Your Honor, just before you finalize and
3 call the jury out would it be possible for us to see a printed
4 version just to make sure we're all on the same page?

5 THE COURT: Yes. I'm just waiting to get an
6 incorporated version.

7 What are you proposing exactly, Mr. Klingeman? So
8 what I just said earlier I'll reimport, in furtherance of the
9 conspiracy instead of in furtherance of the crime. So what are
10 you proposing with respect to the substantive counts?

11 MR. KLINGEMAN: As I recall the language that your
12 Honor has in the draft it's any act in furtherance of the
13 conspiracy.

14 THE COURT: Well I changed that to crime.

15 MR. KLINGEMAN: Right.

16 THE COURT: So as to not have to distinguish it
17 between conspiracy and the substantive count. You're
18 requesting that I make the distinction. So for the conspiracy
19 I'll put -- for the conspiracy language I'll put back in "in
20 furtherance of the conspiracy." What are you requesting with
21 respect to the substantive counts, in furtherance of the
22 essential conduct for the crime?

23 MR. KLINGEMAN: Yes. The same language that's in the
24 original -- your Honor's original instruction.

25 THE COURT: It would read, as you're proposing, like

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1 this. "As to the conspiracy counts, venue can be established
2 either by showing that the defendant had actual knowledge of an
3 act in furtherance of the conspiracy occurring in the Southern
4 District of New York or that the defendant reasonably could
5 have known or contemplated that an act in furtherance of the
6 conspiracy would occur in the Southern District of New York.
7 In assessing what the defendant knew or reasonably could have
8 known or contemplated, you may consider all facts, including
9 any experience or background of the defendant that you may
10 determine relevant. As to the substantive counts, venue can be
11 established either by showing that the defendant had actual
12 knowledge of an act in furtherance of the essential conduct of
13 the crime occurring in the Southern District of New York or
14 that the defendant reasonably could have known or contemplated
15 that an act in furtherance of the essential conduct of the
16 crime would occur in the Southern District of New York. In
17 assessing what the defendant knew or reasonably could have
18 known or contemplated, you may consider all facts including any
19 experience or background of the defendant that you may
20 determine relevant.

21 MR. KLINGEMAN: Yes.

22 THE COURT: Mr. Creizman no view?

23 MR. CREIZMAN: No view.

24 THE COURT: Mr. Shin, you wanted to look at it in
25 writing?

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1 MR. SHIN: It sounded right but just it may be prudent
2 for all of us to look at it in writing.

3 THE COURT: All right. We'll print it.

4 MR. SHIN: Thank you.

5 No objection from the government, your Honor.

6 MR. KLINGEMAN: No objection.

7 MR. CREIZMAN: No objection.

8 THE COURT: All right. So we should bring them out,
9 read the question, read the answer.

10 I think I propose sending a written supplement back as
11 well.

12 MR. SHIN: No objection, your Honor.

13 THE COURT: So if everybody agrees it would look just
14 like what you were handed.

15 MR. CREIZMAN: No objection to that.

16 THE COURT: Let's get the jury.

17 I'll also tell them that I'll bring them out at 3:15
18 to dismiss them.

19 (Jury present; time noted: 2:52 p.m.)

20 THE COURT: Ladies and gentlemen, I did receive your
21 note which reads:

22 "Your Honor, we would like to request the following
23 transcript, cross-examination of Trevon Gross on March 7, 2017.

24 "We would also like to request clarification on the
25 definition of reasonably foreseeable as it relates to venue.

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1 "Kind regards."

2 Signed by juror no. 2 on behalf of the jury.

3 "P.S. We request to be dismissed at 3:15 p.m. today
4 so juror no. 9 may attend her doctor's appointment. Thank
5 you."

6 And my thanks to you, ladies and gentlemen. We did
7 send in a copy of what you requested, the transcript of the
8 cross-examination of Trevon Gross. And then I'm going to
9 provide a supplemental instruction with respect to your second
10 question. I'll read it and we'll send copies back to you.

11 As to the conspiracy counts, venue can be established
12 either by showing that the defendant had actual knowledge of an
13 act in furtherance of the conspiracy occurring in the Southern
14 District of New York or that the defendant reasonably could
15 have known or contemplated that an act in furtherance of the
16 conspiracy would occur in the Southern District of New York.
17 In assessing what the defendant knew or reasonably could have
18 known or contemplated, you may consider all facts including any
19 experience or background of the defendant that you may
20 determine relevant. As to the substantive counts, venue can be
21 established either by showing that the defendant had actual
22 knowledge of an act in furtherance of the essential conduct of
23 the crime occurring in the Southern District of New York or
24 that the defendant reasonably could have known or contemplated
25 that an act in furtherance of the essential conduct of the

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1 crime would occur in the Southern District of New York. In
2 assessing what the defendant knew or reasonably could have
3 known or contemplated, you may consider all facts including any
4 experience or background of the defendant that you may
5 determine relevant.

6 And as I said, I'll send you back with copies of that
7 supplemental instruction. And as you've requested in your P.S.
8 I'll bring you back out at 3:15 to dismiss you for the day.
9 Thank you so much. You may return to the jury room.

10 (Jury continues deliberations)

11 THE COURT: Counsel anything else?

12 I will -- unless we hear from them sooner I will see
13 you at -- ready to go at just before 3:15. Thank you.

14 (Recess pending verdict)

15 THE COURT: It's 3:15 so I'll bring out the jury to
16 dismiss them, remind them of my instructions, tell them they're
17 not here tomorrow and that unless they hear further from me
18 they should come to the jury room by 9:30 on Wednesday to
19 resume their deliberations once they're all present and I'll
20 indicate that the court will be in touch through Ms. Nuñez if
21 there's any alteration to the Wednesday plan in light of the
22 weather.

23 Anything else?

24 MR. KLINGEMAN: No, your Honor.

25 MR. CREIZMAN: No, your Honor.

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1 THE COURT: All right. Thank you.

2 Get the jury.

3 (Jury present)

4 THE COURT: Thank you everyone. It is 3:15. You've
5 indicated, since you've not completed the process, you will end
6 for the day. As I've told you, because of the snowstorm,
7 anticipated snowstorm, you will not be here tomorrow. You will
8 resume your deliberations at 9:30 on Wednesday morning.

9 All my instructions continue to apply. So please do
10 bear those in mind as we get through the snowstorm. If you
11 don't hear anything from me, then presume we'll proceed at --
12 you'll proceed your deliberations at 9:30 once all of you are
13 present in the jury room on Wednesday.

14 Ms. Nuñez has your contact information. She has
15 cellphones for all of you. If you'd like to also leave an
16 e-mail address for her to reach you by e-mail in addition to
17 cellphone if need be she's going to leave a piece of paper for
18 you to do that.

19 If there does appear to be a continuing problem with
20 the weather, with transportation for Wednesday, you will hear
21 from me through Ms. Nuñez as soon as humanly possible either
22 tomorrow night or early Wednesday morning recognizing that many
23 of you have long commutes.

24 So with that I thank everyone for their
25 continuing work. And we'll see you on Wednesday. Good luck

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1 with the snowstorm.

2 (Jury excused)

3 THE COURT: You may be seated.

4 So, I think we just need to establish a process for me
5 letting you know what I think has to happen on Wednesday if the
6 storm continues to be an issue. I think I'll just need to make
7 an executive decision and I will use things like whether the
8 public school -- I think if the public schools are closed again
9 on Wednesday I will cancel deliberations for Wednesday as well.
10 If the public schools are not -- I mean I'll probably just use
11 that as my guide. And hopefully we'll know by Tuesday --
12 tomorrow night where things stand and if not I'll make a call
13 early Wednesday morning. All right. And Ms. Nuñez will let
14 you know if we're off.

15 Anything else to address?

16 Hopefully see you Wednesday. Good luck with the
17 storm.

18 (Adjourned)